

**Lancaster HM of Washington, D.C., Inc., t/a The Jefferson Hotel and Richard Curtis, Petitioner and Hotel Employees and Restaurant Employees International Union, Local 25, AFL-CIO.**  
Case 5-RD-1086

November 30, 1992

**DECISION ON REVIEW AND ORDER  
REMANDING**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

The Board has delegated its authority in this proceeding to a three-member panel, which has considered the Petitioner's request for review of the Regional Director's administrative dismissal of the instant petition. The request for review is granted as it raises a substantial issue with respect to the Regional Director's authority under *Nu-Aimco, Inc.*, 306 NLRB 978 (1992), to dismiss an RD petition because a settlement agreement of outstanding unfair labor practices, signed by the Employer and the Union but not the Petitioner, precludes the processing of that petition as a condition of the agreement. The Board has carefully considered, on review, the issue presented, and has decided to reverse the Regional Director's decision.

The facts are essentially undisputed. Four separate unfair labor practice charges were filed by the Union in October and December 1991 in Cases 5-CA-22336, 5-CA-22352, 5-CA-22443, and 5-CA-22444, and complaints were subsequently issued. The complaint in Case 5-CA-22336 alleged that the Employer facilitated and participated in the circulation among its employees of a decertification petition filed in Case 5-RD-1080 and urged the employees to reject the Union as their bargaining agent.<sup>1</sup> The complaint in Case 5-CA-22352 alleged that the Employer unlawfully withdrew recognition of the Union on or about October 25, 1991. In Cases 5-CA-22443 and 5-CA-22444 the complaints alleged that before and after the activities listed in the earlier complaints, the Employer in September and December 1991 made unilateral changes in the working conditions of the employees, including changes in the method of compensation and the scheduling of employees. On January 14, 1992, the Petitioner filed the instant petition seeking to decertify the Union. The Regional Director held the decertification petition in abeyance pursuant to the Board's blocking charge policy pending resolution of the unfair labor practice charges.

<sup>1</sup> The petition in Case 5-RD-1080 was subsequently dismissed on January 24, 1991, by the Regional Director subject to reinstatement, if appropriate, on the disposition of the unfair labor practice charges in Cases 5-CA-22336 and 5-CA-22352. No request for review was filed to that dismissal.

On July 13, 1992, the Regional Director approved an informal settlement agreement of the four unfair labor practice cases which required the Employer to take certain actions to remedy the alleged violations.<sup>2</sup> The settlement agreement, signed by the Employer and Union but not the Petitioner, included a provision which provided that "[the] approval of this agreement precludes the processing of any RD petition filed prior to the fulfillment of all terms of this agreement by Respondent, including Cases 5-RD-1080 and 5-RD-1086."

Prior to the parties entering into the settlement agreement, the Regional Director had advised them and the Petitioner by letter dated April 17, 1992, that in his opinion the unfair labor practice violations as alleged were sufficient to taint the instant petition and would require dismissal of the petition. Moreover, they were advised that the Regional Director would fully litigate these cases if the settlement agreement did not include the provision described above. The Regional Director stated in this letter that "[the] Board has very recently made clear that such a position should be made known to all parties in the cases involved, and made part of any settlement agreement," citing *Nu-Aimco, Inc.*, supra. The Petitioner's counsel, by letter dated April 25, 1992, objected to requiring the dismissal of the instant petition as a condition of the settlement agreement. The Regional Director dismissed the petition by letter dated July 27, 1992, also citing *Nu-Aimco, Inc.*

It is well established that a timely filed RD petition which has been circulated and signed by employees, and has met all the Board's technical showing of interest requirements, will be processed following compliance with a Board-approved settlement agreement of unfair labor practice charges that blocked the processing of the petition where the settlement agreement contains a nonadmission clause. See *Nu-Aimco, Inc.*, supra, reaffirming *Passavant Health Center*, 278 NLRB 483 (1986), and *Island Spring*, 278 NLRB 913 (1986). The Board in *Nu-Aimco* further noted that "nothing in the Act or the Board's Regulations prohibits the Regional Director from including the decertification Petitioner in the settlement discussions or from taking the position that the unfair labor practices, if proven, are sufficient to 'taint' the petition such that

<sup>2</sup> The settlement agreement required the Employer to no longer unlawfully urge its employees to reject the Union, to recognize the Union, to not make any unilateral changes, and to meet and bargain with the Union. The agreement further provides for the resolution of remedy disputes arising from the alleged illegal changes by a method agreed on by the parties to the unfair labor practice cases, and recognizes the fact that at the time of the signing of the settlement the parties had already met and executed a new collective-bargaining agreement. Although the settlement agreement does not contain a nonadmission clause, neither does it contain an admission by the Employer that it violated the Act. See, e.g., *Island Spring*, 278 NLRB 913 (1986).

dismissal of the petition is warranted.” 306 NLRB at 978. The Board also indicated that the Regional Director should make it clear to the parties during settlement discussions that he or she intends to seek a remedy that would preclude the reinstatement of the petition, and advise them that absent such a settlement the case will be fully litigated. *Id.*

In the instant case, the Regional Director misinterpreted the Board’s requirements as set forth in *Nu-Aimco* regarding how to ensure the dismissal of a decertification petition as part of a settlement agreement to remedy unfair labor practices. We did not intend in *Nu-Aimco* that the decertification petition could be dismissed absent the consent of the decertification petitioner (or, of course, the finding of a violation in a litigated case, or an admission by the respondent). Rather, it was our aim to include the petitioner in the settlement discussions to allow for the possibility that the petitioner could agree to a settlement agreement which provides for the dismissal of the petition as a condition of the settlement. Without the petitioner’s agreement, however, we did not intend that the petitioner be bound to a settlement by others that has the effect of waiving the petitioner’s right under the Act to have the decertification petition processed. In the alternative, as noted in *Nu-Aimco*, in the absence of an admission by

the employer, the Regional Director must choose between litigating the unfair labor practice cases, which could result in a finding of an unfair labor practice violation sufficient to “taint” the petition and require dismissal, or accepting a settlement agreement between the union and the employer, and processing the decertification petition upon compliance with the settlement agreement.

Here, since the settlement agreement was entered into over the objection of the Petitioner and without his signature, it is insufficient to preclude the processing of the Petitioner’s decertification petition. Thus, the Regional Director having accepted the settlement agreement, the decertification petition should be reinstated on compliance with that agreement. Accordingly, we reverse the Regional Director’s dismissal of the decertification petition, reinstate the petition, and remand this case for further action consistent with this decision.

#### ORDER

The Regional Director’s Decision and Order dismissing the instant decertification petition is reversed, the petition is reinstated, and the case is remanded to the Regional Director for processing of the petition upon compliance with the settlement agreement.